IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

MFA.No. 952 of 2000

O.P(MV).NO.2454/1996 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR.
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APPELLANTS/PETITIONERS:
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1. **K.P. KOTHA,**
   S/O. AYYAPPAN,
   KALARIKKAL PARAMBIL HOUSE,
   P.O. KALADY,
   MALAPPURAM DIST.,
   PIN - 679 582 (FATHER OF THE DECEASED).

2. **THAZHETHA PURAKKAL KOMALAVALLY,**
   W/O. KOTHA, KALARIKKAL PARAMBIL HOUSE,
   P.O. KALADY, MALAPPURAM DIST.,
   PIN - 679 582 (MOTHER).

3. **AMBIKADEVI.K.P.,**
   D/O. KOTHA,
   KALARIKKAL PARAMBIL (HOUSE),
   P.O. KALADY,
   MALAPPURAM DIST. - 679 582 (SISTER).

BY ADV. SRI.P.CHADRASEKHAR.

RESPONDENTS/RESPONDENTS:
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1. **V.V. RAJESH, S/O. VASU,**
   ULKANDATH VALAPPIL HOUSE,
   MARAVANJERI.P.O., KALADY,
   (DRIVER OF THE KL 8/C9899 MOTOR CYCLE).

2. **C.K. ASOKAN, S/O. KUNHAYYAPPAN,**
   CHAVARATHIL HOUSE, P.O. KAIPARAMBA,
   THRISSUR, (R.C. OWNER OF MOTOR CYCLE).

M.F.A. NO. 952/2000:

3. UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, P.B. NO. 9, IST FLOOR,
AMBADI BUILDING, C.V. JUNCTION,
PONANI, INSURER OF MOTORCYCLE,
POLICY NO. 101005/31/10/1/01963/95.

4. RAMACHANDRAN,
S/O. C.R. GOPALAN EZHUTHACHAN,
CHEMMENGOTTU VALAPPIL,
PUZAHAKKAL VILLAGE,
CHOORAKKATTUKARA, AMALA NAGAR,
(DRIVER OF BUS KL 8B/8600).

5. T.L. LONA,
THEKKEKARA HOUSE,
P.O. CHITTILAPPILLY, THRISSUR,
(R.C. OWNER OF THE BUS KL 8B/8600).

6. NATIONAL INSURANCE CO. LTD.,
THRISSUR, POLICY NO. 570704/31/94/6302738.

7. SIDHIQUE.K.K.,
S/O. K.P. KAMMU,
KUNDANPARAMBIL HOUSE,
MANNUR, P.O. KALADY,
(DRIVER OF THE CAR KRM 5047).

8. K.P. BAVA,
S/O. SAIDALI, KAVUMPADATH HOUSE,
P.O. EDAPAL, PONANI, (R.C. OWNER OF THE
CAR KRM 5047) (DIED).

9. UNITED INDIA INSURANCE CO. LTD.,
C.V. JUNCTION, PONNANI. (INSURER OF THE CAR
KRM 5047), POLICY NO. 101005/31/50/16/1579/95,
CERTIFICATE NO. 101005/31/50/6/611235/95.

10. KAVUMPADATH FATHIMA, W/O. BAVA, 55 YEARS.

11. KAVUMPADATH RAHIYANATH, D/O. BAVA,
38 YEARS.

12. KAVUMPADATH SHRAFUDHEEN, S/O. BAVA,
36 YEARS.

13. KAVUMPADATH SEMEERA, D/O. BAVA,
34 YEARS.

M.F.A. NO. 952/2000:

14. KAVUMPADATH SALIMON,
S/O. BAVA, 32 YEARS.

15. KAVUMPADATH SEENATH,
D/O. BAVA, 30 YEARS,
EDAPPAL AMSOM AND DESOM,
PONANI TALUK.

BY ADV. SRI.MATHEWS JACOB,
SRI.A.A.MOHAMMED NAZIR.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 08/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.952 OF 2000

Dated 8th October, 2007

JUDGMENT

Koshy,J.

A motor cyclist sustained fatal injuries when his motor cycle was hit by another motor cycle bearing registration No.KL 8C/9899. He sustained head injury and as there was bleeding through ears, he was taken to a nearby hospital. From there he was referred to West Fort Hospital, Thrissur. While he was taken in a car to West Fort Hospital, a bus hit the car. He died in the hospital on the same day. Claim for compensation was filed before the Motor Accidents Claims Tribunal for Rs.4,00,000/= by the father, mother and younger sister of the deceased.

2. Ext.A6 is the wound certificate and Ext.A7 is the postmortem certificate. Ext.A6 shows that there were injuries on the head and abdomen and there was profusely bleeding through ears. Ext.A7 also shows that the death occurred due to the above injuries. The Tribunal found that bus driver is not responsible for the injuries and there is also no evidence to show that any injuries occurred as a result of the second accident. It is also found that there is contributory negligence on the part of the deceased because it was a head on collision with the motor cycle bearing registration No.KL 8C/9899. We are of the

opinion that finding of contributory negligence is justified in this case especially considering Ext.A2 scene mahazar. If any one of the riders was vigilant, accident could have been avoided. The above offending vehicle was insured by the third respondent insurance company. Therefore, Tribunal was right in holding that claimants are entitled to claim only 50% of the compensation calculated and that should be deposited by the third respondent insurance company.

3. Now, we will come to the quantum of compensation. According to the claimants, deceased was a cable operator. But, his income was not proved even though it was claimed that he was getting Rs.3,000/= per month. Tribunal assessed the income at Rs.2,500/=. We see no ground to change the same. The incident occurred on 19.10.1995 At the time of death it was contended that father was aged 63, mother was aged 50 and younger sister was aged 22. It is true that since sister was unmarried, the deceased also would have given help to her for her further needs as well as at the time of marriage. If Rs.2,500/= is the monthly income, after deducting one third, Rs.1,650/= can be fixed as loss of monthly dependency. Considering the age of the mother, 11 can be taken as the multiplier. If that be so, dependency compensation payable will be Rs.2,17,800/= (Rs.1,650 x 12 x 11). Tribunal awarded only

Rs.1,34,400/=. Therefore, the balance will be Rs.83,400/=. If 50% is deducted, the amount of compensation payable is Rs.41,700/=. The above amount should be deposited by the third respondent insurance company with 7.5% interest from the date of application till its deposit, over and above the compensation ordered to be deposited by the Tribunal. Out of the above amount, Rs.10,000/= shall be disbursed to the third appellant and balance amount shall be disbursed to appellants 1 and 2 on a joint receipt.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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